

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,)	No. 07-CV-07634 (PKC) (AJP)
)	
Plaintiff,)	
)	
vs.)	
)	DECLARATION OF TIMOTHY J. HOGAN;
DEUTSCHE BANK TRUST COMPANY)	EXHIBITS "1" TO "8"
AMERICAS (F.A. BANKERS TRUST)	
COMPANY) AND JP MORGAN CHASE)	
BANK IN THEIR SEPARATE CAPACITIES))	
AND AS AGENTS FOR THE PRE AND)	
POST-PETITION LENDERS OF FLEMING)	
COMPANIES, INC.; GENERAL ELECTRIC)	
CAPITAL CORPORATION; C&S Wholesale))	
Grocers, Inc., DOES 1 TO 200.)	
)	
Defendants.)	
)	
_____)	

DECLARATION OF TIMOTHY J. HOGAN

I, Timothy J. Hogan, an attorney licensed to practice before all the courts of the state of Hawaii and hereby declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so.

1. Attached hereto as Exhibit “1” is a true and correct excerpt copy the jury verdict form dated March 6, 2003, in *Wayne Berry v. Fleming Companies, Inc.*, 01-CV-446 SPK LEK (U.S.D.C. Hawaii).

2. Attached hereto as Exhibit “2” is a true and correct copy of the voluntary Chapter 11 petition filed by Fleming Companies, Inc., on April 1, 2003, in the United States Bankruptcy Court for the District of Delaware, commencing *In re Fleming Companies, Inc.*, 03-10945 MFW (Bankr. Del.).

3. Attached hereto as Exhibit “3” is a true and correct copy of the Memorandum Opinion dated July 5, 2007 affirming the jury verdict and final judgment entered in *Wayne Berry v. Fleming Companies, Inc.*, 01-CV-446 SPK LEK (U.S.D.C. Hawaii).

4. Attached hereto as Exhibit “4” is a true and correct copy of the original complaint filed on July 22, 2003, in *Wayne Berry v. Hawaiian Express Service, Inc.*, CV 03-00385 SOM-LEK (U. S. D. C. Hawaii) (what C&S refers in its Memorandum in Support of Motion as the “Hawaii Case”).

5. Attached hereto as Exhibit “5” is a true and correct copy of the August 8, 2003 Order denying Fleming’s Motion for Immediate and Preliminary Injunctive Relief in *Fleming Companies, Inc. v. Wayne Berry*, Adv. Proc. No. 03-54809 MFW (Bankr. Del.).

6. Attached hereto as Exhibit "6" is a true and correct copy of the August 23, 2003, side letter that served upon me by the Defendant lenders' current counsel who, at the time, were Fleming's bankruptcy counsel, just prior to the Fleming Companies, Inc. confirmation hearing on July 26, 2004, in *In re Fleming Companies, Inc.*, Bk. No. 03-10945MFW (Bankr. Del.). This letter was admitted at Fleming's confirmation hearing without objection. Upon information and belief, each of parties in case were represented at the confirmation hearing and did not object to the admission of this document on any grounds.

7. Attached hereto as Exhibit "7" is a true and correct copy of the Fleming Companies, Inc. Form 8-K reporting the closing of the sale to C&S at midnight on July 23, 2003. This document is available on line at the SEC web site, www.sec.gov.

8. Attached hereto as Exhibit "8" is a one page excerpt from the Hawaii District Court docket number 27-2 filed on July 12, 2007, by defendants Deutsche Bank Trust Company Americas and JP Morgan Chase Bank as Agents for the Pre and Post-petition Lenders of Fleming Companies, Inc.

Executed at Honolulu, Hawai'i, September 18, 2007.


TIMOTHY J. HOGAN